GPhC's response to DH's consultation on language controls for nurses, midwives, dentists, dental care professionals, pharmacists and pharmacy technicians – proposed changes to the Dentists Act 1984, the Nursing and Midwifery Order 2001, the Pharmacy Order 2010 and the Pharmacy (Northern Ireland) Order 1976.

Q1 Do you agree that strengthening language controls as proposed will improve quality of care and patient safety?

Strongly agree	Agree	Neither /nor	Disagree	Strongly disagree
√				

Add text:
English language competency supports effective communication. From a patient perspective, communication is key to building trust in the patient-practitioner relationship. It also goes without saying that clinical information and advice must be communicated clearly and accurately to patients. Robert Francis QC, in his report of the Mid Staffordshire NHS Foundation Trust Public Inquiry included at recommendation 172, that *'Government should consider urgently the introduction of a common requirement of proficiency in communication in the English language with patients and other persons providing healthcare to the standard required for a registered medical practitioner to assume professional responsibility for medical treatment of an English-speaking patient'.*
These proposals are a starting point towards satisfying this recommendation.

Q2 Do you agree with the proposed changes for applicants in relation to registration and entry onto the Register in terms of knowledge of the English language?

Strongly agree	Agree	Neither /nor	Disagree	Strongly disagree
√				

Add text:
We understand that the requirement to have the necessary knowledge of English will apply to all applicants and that the guidance we will be required to publish will set out the evidence that applicants may be required to submit to assure us that they do have the necessary English language competence.
Our application procedures for European qualified applicants are already divided into the 2 distinct administrative steps described by DH. The first step is recognition of qualifications, a determination as to whether the individual is to be regarded as being 'appropriately qualified' for registration purposes, followed by the registration stage.
We agree that language competency is not a relevant consideration when determining whether a European applicant holds a qualification which entitles them to mutual automatic recognition.
Similarly, the standard of a European applicant's language competency is not a factor to be considered when comparing the applicant's European qualification against our national qualification requirements for registration under the General System of recognition to ascertain whether compensation measures are required prior to registration.
However, once we are satisfied that the applicant holds a qualification which complies with the requirements of the Directive (or following completion of any compensation measure) an applicant will move to the second stage – the registration stage.
The proposed changes will enable us to require European pharmacy professionals to demonstrate that they have the necessary knowledge of the English language for safe and effective practice before being granted access to the profession.

Q3 Do you agree with the proposed additional powers to take fitness to practise action where there are concerns that a nurse, midwife, dentist, dental care professional, pharmacist or pharmacy technician has insufficient knowledge of the English language?

Strongly agree	Agree	Neither /nor	Disagree	Strongly disagree
√				

Add text:

Our preference is to have insufficient knowledge of English added as a new ground on which pharmacists' and pharmacy technicians' fitness to practise could be impaired. This sends a clear signal about the serious risk to patient safety posed by a professional practising without adequate English language skills and would allow us to take fitness to practise action even if no actual harm has yet occurred. We accept that this is likely to lead to a rise in the number of referrals but if these are triaged correctly then any discriminatory or vexatious complaints can be identified early on and dealt with appropriately. We will also need to communicate the changes effectively to employers who may be best placed to deal with issues at a local level.

Please also see our response to Qu 8 which sets out our concerns on language in relation to temporary service providers.

If the outcome of this consultation were that insufficient knowledge of English was not added as a new ground of impairment, but that a lack of language skills should be included as part of deficient professional performance, then the provision allowing us to require registrants to undertake a language assessment and provide information relating to that assessment needs to be retained and we would like further provisions to enable us to treat failure to take a language assessment or to provide information or documents relating to the assessment as misconduct for the purposes of fitness to practise proceedings.

Q4 Do you think that the powers that are already in legislation are sufficient to secure that healthcare professionals have the necessary knowledge of the English language?

Strongly agree	Agree	Neither /nor	Disagree	Strongly disagree
				√

Add text:

We don't think that our current powers are sufficient to enable us to be assured that European qualified healthcare professionals entering our register have the necessary knowledge of English in the same way as is the case with those that register via either the UK or international routes. Applicants via the international route must pass the academic IELTS test with an overall score of 7 and with no score less than 7 in any section before they can begin the Overseas Pharmacists' Assessment Programme. This is the standard we feel necessary to assure patients and the public that registrants can communicate effectively and practise safely. The implementation of the MRPQ Directive in our governing legislation currently prevents us requiring 'exempt persons' (i.e. EEA nationals) from meeting any requirements to demonstrate that they have reached an adequate standard of proficiency in the knowledge and use of English.

Q5 Do you agree that the proposed changes to the relevant legislation, as set out in the draft Order, will strengthen the knowledge of the English language of nurses, midwives, dentists, dental care professionals, pharmacists and pharmacy technicians in the UK?

Strongly agree	Agree	Neither /nor	Disagree	Strongly disagree
√				
Add text: Yes – Please see our response to Qu: 2				

Q6 Do you think that there is there an alternative to these proposals that does not require a change to legislation?

Yes	No
	√
Add text:	

Costs and benefits and equality analysis

Q7 Do you have views or evidence as to the likely effect on costs or the administrative burden of the proposed changes?

Yes	No
	√

Add text:
We have no evidence as to the likely effect on costs or the administrative burden of these changes. Costs will be incurred in engaging drafting solicitors to draft the required changes to our rules to implement the proposals. There will also be costs associated with administering the consultation on rules and associated guidance and in training staff and panel members of the Appeals and Fitness to Practise Committees in revised procedures.

As mentioned previously our administrative processes are already set up to accommodate the 2 step process. However the changes will mean that extra documentation will need to be checked to ensure any submitted evidence regarding English language competence does satisfy our published guidance. Where evidence has been found to be insufficient applicants will need to be contacted for further evidence or requested to pass a language assessment and to provide evidence of having done so. Application fees may need to be increased to cover any increase in administrative costs.

Also as mentioned in response to question 3 if deficient language remains as a separate category of fitness to practise impairment there is likely to be a rise in the number of referrals which will need to be triaged appropriately.

Q8 Do you think there are any benefits that are not already discussed relating to the proposed changes?

Yes	No
√	

Add text:
We remain concerned that with the introduction of the European Professional Card the number of pharmacy professionals choosing to come to GB to provide temporary and occasional services here is likely to increase. Temporary and occasional service providers, both pharmacists and pharmacy technicians, are only required to provide a declaration as to their language proficiency. We will be unable to require them to submit the same evidence as we require for individuals applying for establishment here. If we are satisfied that they are appropriately qualified, and legally established to provide services in their home member state we will have to put them on our register.
We believe it is important to have deficient English language as a separate category of impairment because if we were to receive concerns about the English language ability of registered temporary service providers we would be able to take appropriate action in the absence of actual patient harm. In our view language controls are no different to requirements for continuing fitness to practise: both are pre-emptive to ensure professionals are competent so that things don't go wrong in the first place.

Q9 Do you have any evidence of harm caused to patients due to the lack of English language proficiency of a nurse, midwife, dentist, dental care professional, pharmacist or pharmacy technician?

Yes	No
	√

Add text: We have no evidence of actual harm having been caused to patients due to the lack of English language proficiency.
However we have anecdotal evidence that language competence is an issue for a number of European applicants seeking registration with us. We provide information on our website about the importance of having the necessary language skills to communicate and work effectively with patients and colleagues. We have also conducted a limited review of fitness to practise cases between 2008 and early 2011 and identified two cases where our inability to refuse registration on grounds of a lack of English language proficiency potentially posed a risk to patients. Details are set out in the Annex.

Q10 Do you agree with the Department's assessment that these proposals will address the current disparity between the existing controls in terms of language competence of European healthcare professionals and those from outside of the EEA?

Yes	No
√	

Add text:
Once these proposals come into force we will be able to require European applicants for registration to demonstrate that they have the same level of English language competency as our international applicants.

Q11 Are you aware of any particular groups who will be affected by this legislation, other than European nurses, midwives, dentists, dental care professional, pharmacists and pharmacy technicians?

Yes	No
	√

Add text:
All applicants will need to demonstrate that they will have the necessary knowledge of English prior to registration. We will be consulting on our guidance regarding the sort of evidence, information and documents individuals including UK qualified and international applicants will need to provide to demonstrate this.

Annex

Case 1

Mr Y ‘s case was heard by the Disciplinary Committee on 23 May 2011. The Committee found that there were sustained examples of sloppy and incompetent management of his pharmacy practice. There was a deliberate flouting of his undertaking not to act as his own superintendent pharmacist, and he failed to reach the level in English within the three year time limit allowed by his undertaking. Further, in the knowledge that he had not reached the required level of competence in English, he dishonestly produced a forged certificate to pretend that he had. He denied the subsequent charge in respect of that at trial, but he was convicted. The Committee found the level of dishonestly in attempting to deceive the pharmacy regulator into believing that his English had reached a safe standard when it had not the most important and serious of the allegations. The Committee ordered Mr Y to be removed from the Register of Pharmacists. The Direction was made on 23 May 2011 and an interim order imposed until the direction for removal comes into effect.

Case 2

The case of Mr M concerns allegations of a number of dispensing errors and of a lack of competency in the English language. The case concluded with the Disciplinary Committee directing Mr M’s removal from the Register of Pharmacists. The language allegations were that he accepted employment as a locum pharmacist at three pharmacies when he did not have the requisite skills and fitness for the task to be performed, contrary to part 2A1(a) of the code, in that he lacked sufficient competency in the English language. The evidence of lack of competency was provided by his colleagues and one patient; one colleague said that, in her view, Mr. M had difficulty in making himself understood, a patient said that Mr. M’s command of English was not very good; another colleague said that Mr. M's English would be best described as broken, and there were gaps when he spoke while he appeared to think what he was going to say; another colleague said "I do not think that his English was very good. I sometimes found him difficult to understand".

There were however evidential difficulties in establishing that the registrant’s command of English was so deficient that he was guilty of misconduct by virtue of having accepted locum work as a community pharmacist. The committee did not find any of the language allegations proved, on the ground that Mr M had been interviewed before being offered work and the interviewers had considered Mr M’s English language skills to be sufficient.